

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

**KATHERINE M. ATKINS and ZANE
FULTON, individually and on behalf of all
others similarly situated,**

Plaintiffs,

v.

**NEXTLEVEL ASSOCIATION
SOLUTIONS, INC. d/b/a
HOMEWISEDOCS.COM, and
REALMANAGE LLC d/b/a AMERICAN
COMMUNITY MANAGEMENT,**

Defendants.

Case No. 1:22-cv-00997

Hon. Gary S. Feinerman

Mag. Susan E. Cox

JOINT STATUS REPORT

Pursuant to the Court's April 25, 2022 Order (ECF 35) Plaintiffs, Katherine M. Atkins and Zane Fulton, and Defendants, NextLevel Association Solutions, Inc. d/b/a HomeWiseDocs.com and RealManage LLC d/b/a American Community Management, submit the following Joint Status Report. The Supreme Court issued a decision in *Channon v. Westward Management* on November 28, 2022, reversing the First District Court of Appeals and answering the certified question in the negative. 2022 IL 128040. The Parties inform the Court of their positions as follows:

Defendants' Position

Plaintiffs purport to state claims for violation of the Illinois Condominium Property Act ("Condo Act"), Illinois Consumer Fraud and Deceptive Business Practices Act ("ICFA"), unjust enrichment, and civil conspiracy. Plaintiffs cannot proceed with any claim they assert following the *Channon* decision. The Supreme Court of Illinois held that the Condo Act "does not create an implied private right of action by a condominium unit seller against an agent of a condominium

association or its board of managers for allegedly violating [section 22.1(c)'s] fee limitations” because “the plain and ordinary meaning of that section clearly establishes the legislature’s intent of *protecting potential buyers of condominium units.*” *Channon v. Westward Mgmt.*, 2022 IL 128040, ¶ 27, 34 (emphasis added). The Court reasoned the plaintiffs, who were each condominium unit sellers, were not members of the class that the legislature intended to benefit in section 22.1, and thus an implied private right of action was improper under the standard established by the Illinois Supreme Court in *Metzger v. DaRosa*, 209 Ill. 2d 30 (2004). *Id.* at ¶ 27. Because Plaintiffs here also base their claims on their experiences as condominium *sellers*, they likewise cannot pursue a Condo Act claim against Defendants, much less anyone else.

Horist v. Sudler & Co.—which the Supreme Court cited favorably in *Channon*—precludes Plaintiffs’ remaining claims. The Seventh Circuit’s *Horist* opinion conclusively establishes that condominium unit sellers cannot assert claims under the Illinois Consumer Fraud Act (“ICFA”) arising from charges for section 22.1 disclosure documents because “stripped of its Condominium Act premise, the Consumer Fraud Act claim rests on nothing more than a generic allegation” of excessive pricing and “Illinois courts have held that ‘charging an unconscionably high price generally is insufficient to establish a claim for unfairness.’” *Horist v. Sudler & Co.*, 941 F.3d 274, 281 (7th Cir. 2019) (quoting *Robinson v. Toyota Motor Credit Corp.*, 775 N.E.2d 951, 961 (Ill. 2002)) (affirming dismissal of ICFA claim). Nor can Plaintiffs pursue unjust enrichment or civil conspiracy claims because neither is an independent claim under Illinois law. *Id.* at 280-81. Thus, both must fall with Plaintiffs’ Condo Act and ICFA claims. *Id.*

Under binding Illinois Supreme Court and Seventh Circuit precedent, condominium unit sellers, like Plaintiffs, cannot assert claims based on allegedly unreasonable fees charged for

disclosure documents pursuant to section 22.1 of the Condo Act. Thus, Plaintiffs cannot proceed with any claims in good faith and should dismiss this action in full.

Defendants will be prepared to discuss these issues (and any others) at the December 15, 2022 status hearing.

Plaintiffs' Position

Plaintiffs are analyzing the *Channon* decision and its impact on this case to determine whether Plaintiffs may need to amend the Complaint to add different claims against these Defendants, add additional parties as defendants, or dismiss this case. Plaintiffs request that the matter be continued for 45 days to allow Plaintiffs time to complete their evaluation.

Dated: December 5, 2022

/s/ Robert F. Merlo

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on December 5, 2022 I electronically filed a true and correct copy of the foregoing **JOINT STATUS REPORT** with the Clerk of the Court by using the CM/ECF system, which will send notice of electronic filing to all parties at the email addresses on file with the Clerk of Court.

Dated: December 5, 2022

/s/ Philip M. Oliss

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